

settled by the payment.⁴⁷

Sierra Club further asserts that Mr. Lehan submitted a claim concerning a January 4, 2004 backup, and did not have his claim processed within the 60-day time frame required by the WIB Claims Program Plan. If this is true, contrary to Sierra Club's assertions, SC Op. pp. 30-31, this would be considered a violation of the Final Decree and could subject defendants to stipulated penalties, as would a failure to offer compensation to Mr. Lehman if his situation meets the requirements for payment in the WIB Program. Counsel for the United States raised these issues with defendants and has been informed that Mr. Lehan's January 2004 claim has since been approved for payment.⁴⁸

The United States appreciates Sierra Club's bringing Mr. Lehan's concerns to light, as it has helped to demonstrate that if issues concerning the WIB Program are brought to the attention of the regulators, they can be appropriately resolved. However, as explained in detail in the United States' Memorandum, pp. 45-48, the regulators would not object to the appointment of an "ombudsman" to assist in overseeing the WIB Programs, should the Court believe it is

⁴⁷ As discussed, see Responsiveness Summary ¶ 29, unlike some claims programs, WIB Claims program does not require victims to waive their legal rights as a pre-condition to participating in the Program. They may wait to review the Solicitor's proposed disposition of their claim, and only if they accept the settlement are they required to waive any other property damage claims related to that WIB incident.

⁴⁸ Mr. Lehan's affidavit further states that the family has incurred other damage and expenses prior to the commencement of the WIB Claims Program under the Final Decree. The regulators fully encourage Mr. Lehan and others who have incurred property damage claims prior to January 1, 2004, to pursue defendants in Ohio state court if they believe they have a valid claim for recovery. As discussed, the WIB Claims Program does nothing to take away any rights WIB victims may have in this regard. See Responsiveness Summary ¶ 29.